
Program Memorandum

Intermediaries/Carriers

Department of Health and
Human Services (DHHS)
HEALTH CARE FINANCING
ADMINISTRATION (HCFA)

Transmittal AB-00-54

Date: JUNE 2000

This Program Memorandum re-issues Program Memorandum AB-99-58, Change Request 876 dated August 1999. The only change is the discard date; all other material remains the same.

CHANGE REQUEST 876

SUBJECT: Modified Procedures for Sharing HCFA Data with the Department of Justice (DOJ)

This Program Memorandum (PM) explains new procedures for sharing information with DOJ. In April 1994, HCFA entered into an interagency agreement with DHHS, Office of Inspector General (OIG), and DOJ that permitted HCFA contractors to furnish information related to the investigation of health care fraud and abuse matters directly to DOJ that previously had to be routed through OIG. In light of the increasing number of requests for data and information attributable to a rise in law enforcement activity, HCFA recently renegotiated the agreement with DOJ.

Unlike with the previous interagency agreement, which was a memorandum of understanding (MOU), the new agreement is a short form letter (see Attachment A) which will be customized to each request. In practice, the process of fulfilling a DOJ data request should significantly differ from practice under the old MOU. Consistent with present practice, the form letter mechanism is **not** applicable to requests regarding Medicare Secondary Payer (MSP) information unless the DOJ requester indicates he or she is pursuing an MSP fraud and abuse matter.

Data requests for the investigation of health care fraud and abuse matters will come directly from an FBI agent or an Assistant United States Attorney, and will identify the file name or type of data needed, the desired media format for receipt of the data, and full contact information to send the data or, if necessary, to clarify issues or resolve problems with the data request. This format of data request also applies to your subcontractors, though HCFA will try to ensure that requests intended for subcontractors are routed through you.

HCFA has established a cost limit for any individual data request of \$200,000, such that if the estimated cost to fulfill any one request is likely to meet or exceed this figure, a HCFA representative will contact the requester to explore the feasibility of other data search and/or production options. The \$200,000 figure has merely been set as an upper threshold limit; the fact that we have enumerated it does not mean that we expect many, if any, individual DOJ requests to ever reach this threshold.

An analysis of DOJ requests fulfilled by HCFA's central office over the course of 1 year, in fact, indicates that the vast majority of requests were satisfied with a minimum of expenditures. Nevertheless, HCFA recognizes that contractors may not have sufficient money in their budgets to respond to DOJ requests, in which case contractors are advised to submit to HCFA a Supplemental Budget Request (SBR).

To facilitate HCFA's ability to track the frequency and burden of DOJ requests, HCFA is requesting that you maintain and submit to HCFA, on a quarterly basis, a log of DOJ data requests that has been itemized to show costs for filling each request. This report should be in the form of an Excel spreadsheet (see Attachment B) and should include, at a minimum, the following fields:

1. Contractor name and identification number;
2. Date of DOJ request;

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3. Nature of DOJ request and DOJ tracking number, if provided;
4. Cost to fulfill request; and
5. Contractors' capacity to fill request, including date of SBR submission, if necessary.

The report should be submitted to HCFA concurrent with the quarterly payment suspension tracking report, and should similarly be sent to the attention of the Program Integrity Group, Program Oversight Branch.

Implementation: The DOJ has already implemented use of the form letter; therefore, you may already be receiving requests in this format. These requests for data should be fulfilled in a timely fashion. The tracking log described in this PM must be implemented on August 23, 1999.

The implementation date for this PM is August 23, 1999.

These instructions should be implemented within your current operating budget. (If there is not sufficient money in your budget to respond to DOJ requests you are advised to submit to HCFA a Supplemental Budget Request (SBR).)

If you have any questions, contact either Regional Office Program Integrity staff or Howard Cohen, hcohen2@hcfa.gov, or (410) 786-9537.

This PM may be discarded after June 30, 2001.

ATTACHMENT A

<date>

If request made to HCFA:

Health Care Financing Administration
Office of Information Services
Director, Enterprise Databases Group
N2-04-27
Baltimore, MD 21244

cc: Regional Office of the Inspector General

If request made to Peer Review Organization (PRO), Fiscal Intermediary (FI), or Carrier:

Name of contact
PRO, FI, or Carrier
Address

cc: Regional Office of the Inspector General
Director, Enterprise Databases Group, HCFA

Re: Request for disclosure of data in HCFA Systems of Records

Dear **(insert)**:

This letter is to request your assistance in obtaining data from the **(insert file name)** on **(insert type of data needed and providers for which data is needed)** for claims during the following time period: **(insert time period)**. Please provide this data in **(specify format, i.e., tape, disk, paper, etc.)** directly to **(insert name, address, telephone number, and role of the person in connection with the case)**.

Instructions to DOJ attorney or FBI agent filling out form letter: Use alternative paragraph number one, below, if the data is being sought in connection with an investigation of specific allegations of fraud or abuse. Use alternative paragraph number two, below, if the data is being sought to detect aberrant billing patterns or other indicia of possible fraud or abuse.

Alternative paragraph number one: The Department of Justice, through the undersigned representative of the Federal Bureau of Investigation, an office of United States Attorney, or an office of the Department of Justice in Washington, D.C., seeks this data to investigate a violation or potential violation of law in HCFA-administered health benefits programs by **(insert industry, entities, or persons)**. The Department of Justice file number for this matter is: **(insert)**. HCFA has issued and published routine uses authorizing disclosure of data in HCFA Systems of Records for such purposes. (See 63 *Federal Register* 38414, July 16, 1998.)

Alternative paragraph number two: The Department of Justice, through the undersigned representative of the Federal Bureau of Investigation, an office of United States Attorney, or an office at the Department of Justice in Washington, D.C., seeks this data for the purpose of discovering, detecting, and investigating violations or potential violations of law in HCFA-administered health benefits programs. The focus of our examination is the following: **(insert description of provider type(s) and/or transaction type(s) being examined for potential fraud)**. HCFA has issued and published routine uses authorizing disclosure of data in HCFA Systems of Records for such purposes. (See 63 *Federal Register* 38414, July 16, 1998.)

You can be assured that the DOJ will take all appropriate measures to ensure that this data will be maintained and used in compliance with Section VI (Confidentiality Procedures) of the Health Care Fraud and Abuse Control Program Guidelines agreed to by the Attorney General and the Secretary

of the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996.

I understand that HCFA does not commit to processing my request if the estimated cost of doing so exceeds \$200,000, and that a HCFA representative will contact me if the estimated cost exceeds \$200,000. Furthermore, I understand that HCFA officials may intercede should a DOJ request for HCFA data create a substantial resource impact on the data processing capabilities of the HCFA Data Center, a Medicare Fiscal Intermediary, Carrier, PRO, or other contractor. For requests initiated by the FBI or United States Attorney's offices, discussions to resolve such resource issues will be conducted between the HCFA Assistant Regional Administrator for the Division of Financial Management and the appropriate FBI agent or Assistant United States Attorney (AUSA), or, if necessary, the appropriate FBI or AUSA supervisor. For requests initiated by DOJ headquarters, or where regional resolution has been unsuccessful, HCFA officials may refer such resource issues to the appropriate DOJ headquarters official.

Thank you for your assistance with this matter. Please call me on **(insert telephone)** if you have any questions about this request.

Sincerely,

(provide name, title, and office)